IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 396 OF 1993

Harishchandra Gopal Patil .Appellant

versus

The State of Maharashtra ..Respondents

Ms. A.R.S. Baxi for the Appellant.

Mr. B. R. Patil A.G.P. for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JANUARY,2005

ORAL ORDER :

1. Heard learned Advocate for the Appellant and AGP for the State.

2. This Appeal arises out of order in Land Acquisition Reference. It is for enhancement by the original claimant. SLAO granted compensation at Rs.2/- per sq. meter. In the Reference it is enhanced to Rs.8/- per sq. meter when the claim of the original claimant was Rs.10/= but increased to Rs.20/=. Learned Counsel for the Appellant drew my attention to the Order of the **Division Bench of this Court in First Appeal No. 1049 of 1989 dated 31st August 2004 (The State of Maharashtra vs. Namdeo**

Ganu Keni & Ors.), wherein the land was from the same village i.e. Chal and the Notification under Section 4 was also same. In paragraph 6 of the said judgment the court had taken into consideration the following aspect:

> **"In so far as, present acquisition is concerned, the notification were issued on 5th October, 1973. These lands are situated at village Chal and are at the distance of 3040 sq. meters from Pune Mumbai High Way. Village Pendhar, Taloja and Navdat are close to the acquired land of village Chal, than other lands and therefore, it would be possible to apply the same test but bearing in mind that these lands are at a distance of more than 3 kilometers from Poona Mumbai High Way."**

After considering the aforesaid aspect, the court fixed the compensation at Rs.15/- per sq. meter from Rs.8/-. Learned counsel for the appellant therefore contended that in view of this judgment, the claimant in this case is entitled for enhancement of compensation from Rs.8/- to Rs.15/- per sq. meter.

3. The learned AGP drew my attention to the

report of valuer Mr. Kulkarni, wherein he has given different distances, from the acquired land as under:

1. Taloja Town 3520 meters
2. Taloja Railway Station 3200 meters
3. MIDC Industrial area Taloja adjacent to Bombay Pune highway
4. Bombay Pune Highway 3200 meters.
5. Bombayh Pune New Highway 7900 meters.
6. Panvel city 10 kms.

The learned AGP also drew my attention to the cross-examination of the claimant wherein the claimant has admitted that since his forefathers the land was being used for agricultural purposes. There was no water and electricity facility in 1970. No industrial development in or around the acquired land. There are no approach roads directly to the land under reference and the agriculturist used the Bandh by way of path way. It was used for raising paddy crop and rain water used to store at a distance of four inch in the said land. Witness further stated that Panvel is about 15-16 kms. from Village Chal. He has no sale instances. Considering these aspects and the distances given by

the Valuer in his report, as stated above, the learned AGP contended that the land under acquisition in this case is farther away from the land, which was the subject matter of the Judgment of the Division Bench, as stated above. He therefore contended that there will be no justification to enhance compensation at Rs.15/- per sq. meter.

4. Since the Division Bench has enhanced the compensation taking into consideration the factors, stated above, the appeal is required to be partly allowed. However, the compensation claimed at Rs.15/- will not be proper because this land under acquisition is farther away from the land to which the Division Bench has referred to in the said Appeal. In my opinion and considering the aspect Rs.12/- per sq. meter would be adequate and appropriate compensation i.e. enhancement of the original compensation by Rs.4/- per sq. meter. Hence, the following order:

ORDER

Appeal is partly allowed. Compensation awarded to the claimant is increased by Rs.4/- per sq. meter. Appeal disposed of with proportionate costs. Needless to say that in view of this

enhancement there will be consequential enhancement in the solatium etc. ‘

13.1.2005 (D.G. DESHPANDE,J.)